

ROYAL COURT
(Samedi Division)

9th February, 1996

30.

Before: The Deputy Bailiff, and
Jurats Herbert and Potter.

The Attorney General

- v -

Simon Ashley Ingham

Sentencing, following guilty plea on 19th January, 1996, to:

- 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (M.D.M.A.), contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (count 1).
- 1 count of possession of a controlled drug (M.D.M.A.), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 2).

Plea: Guilty.

Age: 35.

Details of Offence/s:

The accused voluntarily surrendered to the Police and showed them where he had hidden 333.5 Ecstasy tablets, being the remainder of a quantity of 400 tablets that he had imported into the Island. He denied any intention to supply although the Crown expressed a degree of scepticism at his explanation for factors which pointed to a possible intention to supply.

Details of Mitigation:

Exceptional case for two reasons: i) accused had, by surrendering to the Police entirely produced his own indictment; ii) whilst in custody had been diagnosed as suffering from Hepatitis C, the most serious form of Hepatitis. Prognosis if he remained in prison was poor. Had demonstrated a willingness to overcome his addiction.

Previous Convictions:

Numerous, some of which were for drug, or drug related, offences.

Conclusions:

Count 1 : 3 years' imprisonment.
Count 2 : 1 year's imprisonment, concurrent.

Sentence and Observations of the Court:

3 years' probation, to be supervised by Yorkshire Probation Service in conjunction with Jersey Probation Service. Court was prepared to deal with the case in an exceptional manner. Possibility that effect of a prison sentence would be a sentence to death.

A.R. Binnington, Esq., Crown Advocate.
Advocate J.C. Gollop for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: Late at night on 31st August, 1995, Ingham presented himself at Police Headquarters. He made an extraordinary statement to the Police. The policewoman who interviewed him came to the conclusion that he may have been involved in the supply of illegal substances. He saw a doctor, such was his state, and was prescribed a sedative.

10 Early the next morning, at one o'clock, he took D.C. Underwood and WPC Clapham to a small alleyway alongside Clarence Court and there, concealed behind a low wall, were two plastic screwtop containers. They contained 333.5 Ecstasy tablets. All, apart from one, carried the white dove design, known in the Island; one tablet bore an apple design which is, according to Drugs Squad Officers, rarely encountered in the Island.

15 No drugs or anything relating to drug abuse were found at Ingham's flat. Ingham informed the Police that he had obtained the 400 Ecstasy tablets when he had been to Halifax some weeks previously. He said he had paid £5 for each tablet. As to the 70 that were missing he said that he had not sold them but had
20 swallowed them. He said that he took up to ten Ecstasy tablets a day.

As is well known in this Court, Ecstasy tablets have a street value in Jersey of between £20 and £25 each. He said that he had taken out a local bank loan to purchase the £2,000 of tablets when he went to Halifax. There is nothing in that; he was in employment and apparently told the bank that he wished to purchase a car.

The drugs were found in packets of six; his explanation for that was that the packeting was done in order to deter dogs from stealing them.

If, as Ingham told the Police, he imported 400 tablets, that would have a street value of £8,000 and that clearly represents a large commercial quantity.

We must say this: we have no evidence but we still remain cynical as to the feasibility of his having the daily intake of Ecstasy tablets that he states; and that cynicism is apparently shared by the Drugs Squad Officers. However, we will leave the matter there for the purposes of what we are going to decide.

Ingham is 35 years old; he certainly has a bad criminal record and several of his offences are drug offences.

Even if we accept - as we do - that these drugs were for personal use, in the case of A.G. -v- Plowright (13th February, 1995) Jersey Unreported we find this:

"The Crown has considered the question of the guilty plea. But, as was said in R. -v- Dolgin (1988) 10 Cr.App.R.(S) 447, in the headnote to that case:

"In a case of importing controlled drugs the fact that the drugs were intended for personal use only and not for resale is not a material factor in sentencing".

In that case the Court had every doubt that the drugs were for personal use only.

As Crown Advocate Binnington has said, the circumstances of this case are wholly unusual and, we would suggest, wholly exceptional. Ingham has in fact written his indictment in its entirety. The Police were not aware in any way of his activities. He did not, as he might have done, destroy the drugs; he actually reported their location to the Police.

In Wood -v- A.G. (15th February, 1994) Jersey Unreported CofA, at p.4, the Court said this:

"The co-operation offered by this Applicant to the Police in his statement explaining exactly what the three pieces of paper were may not be precisely equivalent to the

5 *action of a Defendant giving himself up to the Police, as
the Defendant was under arrest at the time when he made
his statement, but it is significant that the explanation
which the Applicant gave of those pieces of paper made it
possible for the charge of supplying LSD to be made. Upon
the evidence then available to the Police, it does not
appear that it would have been possible for that charge to
have been made without the explanation voluntarily given
by the Applicant in his statement. This is a feature of
10 the case which rightly constitutes mitigation and demands
some modification of the sentence in addition to the
ordinary reduction of one-third for a plea of guilty".*

15 Ingham has shown clearly from the Probation Report that he
has made efforts to counter his dependency. But, apart from all
that, and apart from the mitigation which would normally be taken
into account, he has a very serious medical problem and we shall
look at that in a moment. The medical problem from the medical
reports which we have seen does not show a good prognosis.

20 Crown Advocate Binnington is perfectly right: normally, in a
case such as this, the starting point would be seven years and a
substantial discount would be allowed for the unusual
circumstances which we have outlined. Crown Advocate Binnington
25 has obviously had some problems with this case and we can
understand those problems; they are very real and very
exceptional.

30 His main problem was to decide whether to adjudicate the
matter on the basis of a custodial or a non-custodial sentence and
he felt that only a custodial sentence was applicable. Even
though the matter was highly exceptional and even though he was
able - from the seven years starting point - to give much greater
discounts than normal, his recommendation to this Court was that
35 the sentence be three years' imprisonment on the first count, and
twelve months' imprisonment on the second count, concurrent.

40 We have also had great difficulty in deciding this matter.
We share Crown Advocate Binnington's view and that of Mr. Gollop
that it is an exceptionally difficult case. Hepatitis C is what
the accused is suffering from and that is the most severe of the
forms of Hepatitis and it was probably contracted from sharing
needles perhaps many years' ago.

45 The point that worries us is that it is quite clear that
there is very little help for him if he is sent to prison. Mrs.
Adcock, the Probation Officer, who has given us a very detailed
and very careful Probation Report - and we commend her for that -
says this under the heading of 'Health' - and we realise it is not
50 usual to read from Probation Reports but we intend to do so now:

5 *"It is possible to treat Hepatitis C using 'Interferon' although the success rates are not high. This can only be offered after a full assessment which would involve hospital admission for a liver biopsy. The treatment can then be provided on an out-patient basis but it is debilitating in itself and can result in a patient becoming very depressed. It is not felt advisable therefore to treat someone who is in prison except as an emergency. Ideally, Mr. Ingham would return to live with his parents for the course of the treatment. His mother confirmed to me she would be willing and able to provide him with a home, and the parents live in West Yorkshire"*

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15 Although we entirely agree with Crown Advocate Binnington that in normal circumstances a custodial sentence must follow for drugs as serious as this we have a situation in which we may very well be sentencing Ingham to what could be a death sentence, as he cannot be treated successfully for this serious illness in prison.

20 In these exceptional circumstances therefore - and I must stress this because I do not wish this Court to send out a signal to anybody involved in what is technically importation of Class A drugs that this Court will do anything other than order a prison sentence save in exceptional circumstances - we are going to allow

25 the matter to be dealt with on a non-custodial basis in the hope and expectation that Ingham will be able to get the proper medical support that he requires and may even be able to rid himself of this dreadful habit in which he has become deeply involved.

30 Ingham, will you stand up, please. We are going to sentence you to a period of three years' Probation which will be carried out under the supervision of the Yorkshire Probation Service who will liaise with the Jersey Probation Service. Of course, if you breach that Probation Order you may very well be brought back here

35 for your sentence to be carried out. We hope that you will take advantage of the very unusual circumstances of your case. We further order the forfeiture and destruction of the drugs. We would like to thank both counsel for the assistance which they have given us this morning.

Authorities

A.G. -v- Plowright (13th February, 1995) Jersey Unreported.

Wood -v- A.G. (15th February, 1994) Jersey Unreported.